80-982

Supreme Court, U. S.
FILED
DEC 4 1980
MICHAEL RODAK, JR., CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

December Term, 1980

No.

WILLIAM S. KARN, Petitioner

vs.

THE MAGNAVOX COMPANY, and
NORTH AMERICAN PHILIPS CORP.,
Respondents.

PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE STATE
OF DELAWARE

Of Counsel:

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Petitioner
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QUESTIONS PRESENTED

The petitioner was a minority shareowner in The Magnavox Company which company was incorporated in the state of Delaware. The petitioner was frozen out of his ownership by a series of steps that included a class action civil action in the court system of Delaware. There was no competitive bidding for ownership of The Magnavox Company in its court forced sale to North American Philips Corporation. In the Delaware court proceeding the petitioner made timely objection claiming that the Delaware court did not have subject matter jurisdiction since the forced sale without competitive bidding constituted a violation of the Sherman Act antitrust laws. The Supreme

Court of the State of Delaware has refused to review whether its state court system has subject matter jurisdiction, which objection of subject matter jurisdiction can be raised at any time per their court rules (same as Federal Rules of Civil Procedure). Instead the Supreme Court of the State of Delaware has claimed a procedural deficiency by the petitioner, claiming that the petitioner's appeal from the issue of subject matter jurisdiction could only be filed after entry of the lower state court order disposing of the class action settlement. On this procedural ground the petitioner's appeal of the lower court's ruling on subject matter jurisdiction was dismissed. The questions presented for review are:

1. Does the Delaware state court system lack subject matter jurisdiction in presuming to dispose of minority ownership

of The Magnavox Company, the lack of jurisdiction arising from violation of the Sherman Act (Title 15 U.S.C. section 1 antitrust law) being a violation thereof in that the settlement ignored liability for threefold damages stemming from a freezeout sale without competitive bidding?

2. Does the Delaware state court system lack subject matter jurisdiction in ruling upon petitioner's challenge of the disposition of the petitioner's minority ownership of The Magnavox Company, disposition being allegedly in violation of the Sherman Act, jurisdiction lacking because jurisdiction is as stated by the U.S. Constitution article III, section 2.1 which portion of the Constitution reads that the U.S. Supreme Court judicial power shall extend to controversies between a state and citizens of another state?

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NORTH AMERICAN PHILIPS CORPORATION,
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PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE STATE
OF DELAWARE

Petitioner William S. Karn respectfully prays that a writ of certiorari issue to review the judgment of the Supreme Court of the State of Delaware entered in this proceeding on October 23, 1980.

COURT ORDER BELOW

The order of the Supreme Court of the State of Delaware appears in the

Appendix hereto at pages A1 - A2.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. ø 1254(1).

QUESTIONS PRESENTED

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STATEMENT OF THE CASE

Petitioner herein, Delaware state court appellant below, Karn was designated as a member of the minority shareowner class in a class action suit of title Singer vs. Magnavox. Minority shareowner Karn showed up at the Delaware Court of Chancery hearing wherein the proposed final settlement of the class action by the minority shareowner Singer was presented to the court. Karn's complaint was that there was a forced sell-out without competitive bidding. The sale was forced under color of law with state court approved procedure. The procedure was in fact a violation of the Sherman Act as stated by title 15 U.S. Code section 1. The Magnavox case came on for proposed final settlement hearing before the Court of Chancery of the State of Delaware in and for New Castle County on July 31, 1980. Petitioner herein Karn

appeared at that hearing and in writing with due formality moved for dismissal of the state court action. The reason given in support of the motion was that the settlement was part of an antitrust violation. Opposition counsel has quoted a statement by Mr. Justice White to the effect that corporations are creatures of state law; and said counsel assumes that that is dispositive of the controversy in favor of his client. Petitioner Karn believes that the incorporation business service run by the state of Delaware which issues and administers corporate charters is also a creature of state law. Such a state agency is subject to all the appropriate federal laws including the Sherman Act antitrust laws. Even if we assume that a state may reasonably determine the rules of conveyance of all real property that stands behind a corporate charter that reasonableness

stops short of allowing a forced sale without competitive bidding. A forced sale without competitive bidding is precisely in the spirit of the practice proscribed by the Sherman Act antitrust laws.

The correction of this freezeout abuse requires no radical change of government. States may continue to issue and administer corporate charters. However, instead of allowing a freezeout merger, the majority ownership desiring to effect a merger should be obliged to announce to all the world that any qualified bidder may bid for total ownership of the company. If a bid is received that is higher than that offered by the majority ownership then they too should be obliged to tender their shares and be obliged to accept the highest bid for the benefit of all owners including the minority owners. Such a procedure has been followed in the past

in various spectacular takeover battles. When a state allows a corporate freezeout without invitation for bids for entire ownership of the corporation by any qualified bidder then the state is acting as a party to a violation of the federal antitrust laws.

Moreover the petitioner Karn was similarly delt with in a summary manner by the Delaware Court of Chancery and the Delaware Supreme Court when Karn objected to his being frozen out of his ownership in Filtrol Corporation last year. These Delaware courts turn a deaf ear to Karn's cries of an antitrust law violation in the freezeout procedure. In the case of Filtrol Corporation the Delaware Supreme Court said Karn was too late in raising objections of antitrust law violation. In the case of Magnavox the Delaware Supreme Court said Karn was too early in filing his appeal that there is lack of

state court jurisdiction because of antitrust law violation. At this point we have a controversy between a state and a citizen of another state over the issue as to whether there is an antitrust law violation in the state practice of allowing a freezeout without competitive bidding. Per the U.S. Constitution such a controversy shall be reached by the judicial power of the U.S. Supreme Court.

The counsel opposing Karn in the Delaware court action submitted to the Supreme Court of the State of Delaware a motion for dismissal of Karn's appeal. On this motion arguments were heard on October 14, 1980 before the Delaware Supreme Court before C.J. Herrmann and JJ. Quillen and Horsey. It was Karn's contention that the Delaware state court system lacked subject matter jurisdiction because of the antitrust law violation. It was Karn's belief that only by reach-

ing the merits of that issue could the Delaware Supreme Court make any appropriate ruling upon a motion to dismiss Karn's appeal. What happened in fact at the hearing was that C.J. Herrmann cut short any comment by Karn that the Delaware court was improperly sitting in judgment of its own case in view of its vested interest in the incorporation tax revenues. Instead that court insisted in confining the arguments to the narrow procedural issue as to whether Karn's appeal had been filed too soon, i.e. before the Court of Chancery had issued its written approval of the class action settlement, which written approval did not issue until several weeks after the hearing.

One cannot tell with certainty either by foresight or hindsight as to what constitutes a fair market price of a corporation. Fairness is not the issue.

Free competition is the issue. Any restraint of trade in arriving at the sale of common stock corporate ownership must offend the American tradition of free competition which the Sherman Act seeks to uphold.

The following cases have been considered by several parties as being pertinent to the present controversy:

Cort vs. Ash, 422 U.S. 66 (1975)

Santa Fe Industries, Inc. vs. Green, 430 U.S. 462 (1977)

Shaffer vs. Heitner, 433 U.S. 186 (1977)

REASONS FOR GRANTING THE WRIT

A. The Decisions Below Undermine and Thwart Important Public Policies in the Administration and Enforcement of the Sherman Act As Stated in Title 15 U.S.C. Section 1.

(1) The Decision Below Continues to Allow Freezeout Forced Sales of Minority Stockownership in Violation of the Sherman Act.

This freezeout procedure is essentially the same as that which the petitioner experienced in his Filtrol Corporation stock ownership. The procedure is routine under Delaware corporate law and Delaware court practice. In the freezeouts there no opportunity offered by the court for competitive bidding. Yet the solution is simple enough. The court need only announce that the company is up for sale to the highest bidder, the high bidder taking all, not only the

minority share ownership but the block of stock assembled by the raiding company. An upset price may be set by the court. That way the raider will bid its best price, the minority may organize its own buy out bid, and prospective outside buyers will force the price to the level of optimum evaluation of the company's commercial worth.

(2) The Decision Below Permits Operation of an Essentially Private Business Service in Issuing and Administering Incorporation Charters That Is Immune to Antitrust Laws and State Boundary Limitations of State Sovereignty.

The issuing and administering charters of incorporation is in many respects simply a business service that could run without connection with a state government. By being merged with the machinery of a state government the business service aspects of administering corporate

charters have assumed a cloak of immunity to federal antitrust laws; and simultaneously under the common laws governing business contracts the operations have extended across state boundaries without respecting the sovereignty of other states.

B. The Action of a State Court of Sitting in Judgment of an Antitrust Law Violation by an Agency of That State Exceeds the Jurisdiction of That State Court.

It is understandable that the courts of Delaware refuse to consider whether freezeouts under their very profitable incorporation system is in violation of the federal antitrust laws. Not only is a vested revenue interest threatened but the charge itself, if accepted as a prima facie case, removes the hearing from the state court jurisdiction.

C. Application of Federal Antitrust Laws to the State Business of Administering Corporate Charters Is Necessary to Prevent a Disasterous "Race to the Bottom" Competition among States Offering the Most Liberal Corporation Laws.

(1) States Compete for the Profitable Business of Incorporating Private Businesses.

(2) The Competition Is In the Form of Increasingly Liberal Laws That Favor Management at the Expense of Minority Ownership Investment.

The state legislatures and court systems are sensitive to the revenue generating source available in issuing corporate charters. Generally the corporations operate nationwide and have no greater tie in by commercial reasons with the state issuing the charter than with the other 49 states. Indeed the home office and manufacturing facilities are

more often in the more industralized part of the nation or in the several major financial centers of the nation. Since the businesses which are in question (The Magnavox Company here) are interstate in nature there should be a uniform responsibility to obey federal laws including federal antitrust laws. Yet one state seeks to gain in incorporation attractiveness over another state by allowing such federal law violations under color of administering constitutionally proper state laws. When anyone's interest is to be compromised it is the silent scattered small stockowner that will be sacrificed to the raiding corporate management class.

The solution is simple and not radical and is simply to insist upon uniform application of appropriate federal laws including federal antitrust laws by all courts.

CONCLUSION

The respondents thru the Delaware court system have frozen out the petitioner's ownership interest in The Magnavox Company without competitive bidding and hence in violation of the Sherman Act. The Delaware State Supreme Court has refused to rule on whether the Delaware state court system has subject matter jurisdiction over such an antitrust law violation. Instead it rejected the petitioner's appeal of the lower court ruling on subject matter jurisdiction by claiming that the appeal was filed too early, before the lower court had issued a written order relating to the terms of the class action settlement. The petitioner now seeks a ruling that there has been an antitrust law violation and that that fact removes the case from Delaware state court jurisdiction.

For the foregoing reasons it is respectfully submitted that this Honorable Court should issue a writ of certiorari to review the judgment of the Supreme Court of the State of Delaware.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of December 1980 three copies of this Petition for a Writ of Certiorari were served by first class mail postage prepaid on the attorneys for respondents The Magnavox Company and North American Philips Corporation.

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No. 193,1980

WILLIAM S. KARN,

Plaintiff Below, Appellant,

vs.

THE MAGNAVOX COMPANY, et al.

Defendants Below, Appellees.

Submitted: October 14, 1980
Decided: October 23, 1980

Before HERRMANN, Chief Justice, and

QUILLEN and HORSEY, Justices

ORDER

This 23rd day of October, 1980,

Upon due consideration of the Motion of plaintiffs below for a Rule to Show Cause Why This Appeal Should Not Be Dismissed, and of the Answer thereto filed by William S. Karn, and the oral arguments presented in connection therewith,

It appearing to the Court that this appeal was filed prematurely and in violation of the Rules of this Court in that it was not processed as an appeal from any Interlocutory Order of the Court of Chancery and it was filed before any Final Order of the Court of Chancery was entered,

NOW, THEREFORE, IT IS ORDERED That this appeal be and it is hereby DISMISSED.

BY THE COURT:

/s/ D. L. Herrmann

Chief Justice